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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71722; File No. SR-NYSEARCA-2014-22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Establish Pricing for the Retail Liquidity Program and Make Certain Changes Relating to Open Orders
March 13, 2014.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 28, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to (i) establish pricing for the Retail Liquidity Program and (ii) make certain changes relating to open orders. The Exchange proposes to implement the fee change effective March 1, 2014. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) establish pricing for the Retail Liquidity Program and (ii) make certain changes relating to open orders. The Exchange proposes to implement the fee change effective March 1, 2014.

Retail Liquidity Program

The Retail Liquidity Program has been approved by the Commission to operate for one year as a pilot program.⁴ The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges ("UTP Securities"), excluding securities listed on New York Stock Exchange LLC ("NYSE"), while also providing the potential for price improvement to such order flow.

Two new classes of market participants were created under the Retail Liquidity Program: (1) Retail Member Organizations ("RMOs"),⁵ which are eligible to submit certain retail order

⁴ See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

⁵ "RMO" is defined in Rule 7.44(a)(2) as an ETP Holder that is approved by the Exchange to submit Retail Orders.

flow (“Retail Orders”)⁶ to the Exchange, and (2) Retail Liquidity Providers (“RLPs”),⁷ which are required to provide potential price improvement for RMO Retail Orders in the form of non-displayed interest (“Retail Price Improvement Orders” or “RPIs”) that is better than the best protected bid (“PBB”) or the best protected offer (“PBO”) (together, the “PBBO”).⁸ ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

An RMO submitting an RMO Retail Order could designate several ways for the RMO Retail Order to interact with available contra-side interest.⁹ Such contra-side interest could be against RPIs or against other non-displayed liquidity and displayable odd lot interest priced better than the PBBO (“other price-improving interest”), all of which the Exchange would

⁶ “Retail Order” is defined in Rule 7.44(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. As described further below, designation of an order as a Retail Order of an RMO for purposes of the Retail Liquidity Program is separate from the designation of an order as a Retail Order for purposes of existing pricing tiers in the Fee Schedule. For that reason, the remainder of this proposal will refer to Retail Orders of RMOs within the Retail Liquidity Program as “RMO Retail Orders” and to other Retail Orders outside of the Retail Liquidity Program just as “Retail Orders.”

⁷ “RLP” is defined in Rule 7.44(a)(1) as an ETP Holder that is approved by the Exchange to act as such and that is required to submit Retail Price Improvement Orders in accordance with Rule 7.44.

⁸ “RPI” is defined in Rule 7.44(a)(4) and consists of non-displayed interest in NYSE Arca-listed securities and UTP Securities that is priced better than the PBB or PBO, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least \$0.001 and that is identified as such. The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (“NBB”) and national best offer (“NBO”), respectively, will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611. See Rule 7.44(a)(4) for additional details regarding RPIs.

⁹ See Rule 7.44(k) for a description of the various RMO Retail Order designations.

consider within the Retail Liquidity Program.¹⁰ If the RMO Retail Order has not completely executed against such interest within the Retail Liquidity Program, the RMO Retail Order could alternatively execute outside of the Retail Liquidity Program against contra-side interest on the NYSE Arca Book or on an away market after routing, if so designated.

In proposing the Retail Liquidity Program, the Exchange stated that it would submit a separate proposal to amend its Fee Schedule in connection with the Retail Liquidity Program.¹¹

Accordingly, the Exchange proposes to adopt the following pricing:¹²

- RPIs of RLPs would be free if executed against RMO Retail Orders;
- RPIs of non-RLPs would be free if executed against RMO Retail Orders;¹³
- Other price-improving interest would receive applicable Tiered or Basic Rates in the Fee Schedule if executed against RMO Retail Orders; and

¹⁰ While such other price-improving interest would not be considered a new order type, executions of such other price-improving interest against RMO Retail Orders would be considered part of the Retail Liquidity Program for purposes of differentiating between such interest and other available contra-side interest in Exchange systems (e.g., interest on the NYSE Arca Book) or on an away market after routing.

¹¹ See supra note 4 at 79525, n. 8.

¹² Participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to an ETP Holder that does not choose to participate. Because the Retail Liquidity Program has been approved to operate as a one-year pilot program, the Exchange anticipates that it will periodically review this pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities while also providing the potential for price improvement to such order flow.

¹³ The Exchange originally anticipated that RLPs could receive special execution fees for executing RPIs against RMO Retail Orders, as compared to non-RLPs, in exchange for satisfying certain specified quoting obligations. See supra note 4 at 79525. These quoting obligations would not apply until the first day of the third consecutive calendar month after the ETP Holder begins operation as an RLP. See Rule 7.44(f)(3); supra note 4 at 79527. Therefore, at this time, the Exchange is proposing that the same pricing would apply to RLPs and non-RLPs for executions of RPIs. The Exchange may consider applying different pricing to RLP and non-RLP executions of RPIs at a later date, but such change in pricing would be the subject of a separate, subsequent proposal submitted by the Exchange to the Commission.

- RMO Retail Orders would receive a credit of \$0.0005 per share if executed against RPIs of RLPs and non-RLPs or against other price-improving interest.

The proposed credit of \$0.0005 per share for RMO Retail Orders would only apply to RMO Retail Orders if executed within the Retail Liquidity Program (i.e., against RPIs of RLPs and non-RLPs or against other price-improving interest). An RMO Retail Order that executes outside of the Retail Liquidity Program would be considered just a Retail Order (not an “RMO” Retail Order) and receive pricing applicable to Tiered or Basic Rates in the Fee Schedule.¹⁴ In this regard, the Fee Schedule currently includes a Retail Order Tier and a Retail Order Cross-Asset Tier (together, the “Retail Order Tiers”), which are separate and distinct from the Retail Liquidity Program and provide for incrementally higher credits for ETP Holders that satisfy certain qualification thresholds related to executions of Retail Orders.¹⁵

Designation of an order as a Retail Order for purposes of the Retail Order Tiers is separate from the designation of an order as an RMO Retail Order for purposes of the Retail Liquidity Program, despite the characteristics of Retail Orders and RMO Retail Orders being identical (i.e., they must all satisfy the definition of Retail Order in Rule 7.44(a)(3)).¹⁶

¹⁴ As is currently the case, applicable charges would be based on an ETP Holder’s qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

¹⁵ The Retail Order Tier provides for a credit of \$0.0033 per share of Retail Orders that provide liquidity to the NYSE Arca Book for an ETP Holder that executes an average daily volume (“ADV”) of Retail Orders during the month that is 0.20% or more of U.S. consolidated ADV (“CADV”). The Retail Order Cross-Asset Tier provides for a credit of \$0.0034 per share of Retail Orders that provide liquidity to the NYSE Arca Book for an ETP Holder that executes an ADV of Retail Orders during the month that is 0.30% or more of U.S. CADV and that is affiliated with an NYSE Arca Options Trading Permit (“OTP”) Holder or OTP Firm that provides an ADV of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.50% of total Customer equity and exchange-traded fund option ADV as reported by The Options Clearing Corporation.

¹⁶ An ETP Holder may designate an order as a Retail Order for purposes of the Retail Order Tiers either (1) by designating certain order entry ports at the Exchange as “Retail Order

Executions of RMO Retail Orders against RPIs or against other price-improving interest within the Retail Liquidity Program would count toward the qualification thresholds of the Retail Order Tiers, but would not be eligible for the corresponding credits available under the Retail Order Tiers.¹⁷

An ETP Holder would remain able to designate an order as a Retail Order for purposes of the Retail Order Tiers without designating the order as an RMO Retail Order for purposes of the Retail Liquidity Program. The result would be that the Retail Order would not be eligible to execute against RPIs or receive the \$0.0005 credit proposed herein. An ETP Holder could also designate an order as an RMO Retail Order for purposes of the Retail Liquidity Program and as a Retail Order for purposes of the Retail Order Tiers, in which case the Exchange would consider the order to be an RMO Retail Order within the Retail Liquidity Program for any executions against RPIs or other price-improving interest and then just a Retail Order for purposes of the Retail Order Tiers for any executions outside of the Retail Liquidity Program against liquidity on the NYSE Arca Book.¹⁸

Ports” and attesting, in a form and/or manner prescribed by the Exchange, that all orders submitted to the Exchange via such Retail Order Ports are Retail Orders; or (2) by means of a specific tag in the order entry message. See, e.g., Securities Exchange Act Release No. 68322 (November 29, 2012), 77 FR 72425 (December 5, 2012) (SR-NYSEArca-2012-129). The Exchange proposes non-substantive changes to (1) replace the description of Retail Order in the Fee Schedule with cross-references to Rule 7.44(a)(3), and (2) change a reference in the Retail Order Cross-Asset Tier description from CADV to ADV.

¹⁷ The credits under the Retail Order Tiers apply only to orders that provide liquidity. An RMO Retail Order that executes against an RPI or other price-improving interest within the Retail Liquidity Program would always be considered to remove liquidity (e.g., the RPI or other price-improving interest would provide liquidity and the RMO Retail Order would remove liquidity). In contrast, Retail Orders outside of the Retail Liquidity Program could either provide or remove liquidity, depending on the circumstances. As described in note 14 above, the Retail Order Tier credits apply only to executions of Retail Orders that provide liquidity.

¹⁸ While unlikely, an ETP Holder could also designate an order as an RMO Retail Order for

Open Orders

The Exchange proposes to amend footnote 10 in the Fee Schedule, which relates to Market Maker fees and credits, to eliminate the restriction that credits will not be applied to open orders (e.g., “Good Till Cancelled” or “GTC” Orders) executed after the trading date on which they were entered. The Exchange is eliminating the restriction to encourage more orders to be submitted and enhance liquidity on the Exchange.¹⁹

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange notes that a significant percentage of the orders of individual investors are

purposes of the Retail Liquidity Program but not as a Retail Order for purposes of the Retail Order Tiers. The result would be that executions of the RMO Retail Order against RPIs or other price-improving interest within the Retail Liquidity Program would count toward the qualification thresholds of the Retail Order Tiers. However, any subsequent executions of the order against the NYSE Arca Book would not be considered Retail Order executions and would therefore neither count toward the qualification thresholds of the Retail Order Tiers nor be eligible for the Retail Order Tier credits.

¹⁹ The Exchange recently made a similar change to non-Market Maker pricing. See Securities Exchange Act Release No. 71214 (December 31, 2013), 79 FR 873 (January 7, 2014) (SR-NYSEArca-2013-146).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

executed over-the-counter.²² While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types.

Overall, the Exchange believes that the proposed change is reasonable because it would establish pricing designed to increase competition among execution venues, encourage additional liquidity and offer the potential for price improvement to retail investors. The Exchange believes that the \$0.0005 credit proposed for RMO Retail Order executions against RPIs or other price-improving interest is reasonable because it would create a financial incentive to bring additional retail order flow to a public market. This rate is also reasonable because it is the same rate that applies to RMO Retail Orders under the NYSE Retail Liquidity Program.²³ The Exchange also believes that not charging RLPs and non-RLPs for their executions of RPIs against RMO Retail Orders is reasonable because it could contribute to robust amounts of price-improved, RPI liquidity being available for interaction with the RMO Retail Orders and could therefore result in greater price improvement for RMO Retail Orders. The Exchange also believes that applying Tiered or Basic rates to executions of other price-improving interest against RMO Retail Orders is reasonable because such other price-improving interest would be included within the Retail

²² See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (“Concept Release”) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

²³ Rule 7.44 is based on NYSE Rule 107C, which governs NYSE’s “Retail Liquidity Program.” The NYSE Retail Liquidity Program was approved by the Commission and commenced operations on August 1, 2012. See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84).

Liquidity Program for potential interaction with RMO Retail Orders, but without being so designated by ETP Holders, and because Tiered or Basic rates are the rates that would otherwise apply to such other price-improving interest absent their interaction with RMO Retail Orders. The Exchange also believes that it is reasonable to apply Tiered or Basic rates to RMO Retail Orders that execute outside of the Retail Liquidity Program as just Retail Orders (i.e., against the NYSE Arca Book or routed away from the Exchange and executed on another market) because these are the rates that would otherwise apply to such orders absent their designation as an RMO Retail Order within the Retail Liquidity Program (i.e., just as a Retail Order).

The pricing proposed herein is equitable and, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange also believes that it is equitable and not unfairly discriminatory for orders designated as RMO Retail Orders within the Retail Liquidity Program to count toward determining qualifications for the Retail Order Tiers because the characteristics of RMO Retail Orders and other Retail Orders are the same. This is also equitable and not unfairly discriminatory because these existing pricing tiers would remain available to all ETP Holders, including those ETP Holders that choose to designate an order as an RMO Retail Order for purposes of the Retail Liquidity Program and as a Retail Order for purposes of the Retail Order Tiers.

The proposed pricing could result in an RPI receiving a rate (i.e., free) that is inferior to the rate received by other price-improving interest (e.g., a \$0.0015 per share credit under Basic Rates for a Mid-Point Passive Liquidity Order that provides liquidity to the NYSE Arca Book), even when both execute against an RMO Retail Order. The Exchange believes that this is

equitable and not unfairly discriminatory because RPIs would only execute against RMO Retail Orders, whereas other price-improving interest could execute against RMO Retail Orders or other marketable interest, including non-retail liquidity.²⁴ In this regard, and as previously recognized by the Commission, “markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.”²⁵ The Exchange has sought to balance this view in setting the pricing of RPIs compared to other price-improving interest, recognizing that the ability to limit interaction only to RMO Retail Orders could be a potential benefit applicable only to RPIs. This is also equitable and not unfairly discriminatory because the use of RPIs by RLPs and non-RLPs is voluntary. ETP Holders that perceive that the potential advantages of interacting with RMO Retail Orders outweigh the potential costs (i.e., providing price improvement and potential inferior pricing as compared to other price-improving interest) may choose to utilize RPIs, but those that do not are free to forgo involvement in the Retail Liquidity Program.

The Exchange believes that eliminating the restriction on open orders in footnote 10 in the Fee Schedule and making credits available to open orders that execute after the day that they are entered is reasonable because it may encourage more open orders to be submitted, which may enhance liquidity on the Exchange. The Exchange believes that the proposed change to footnote 10 in the Fee Schedule is equitable and not unfairly discriminatory because all ETP Holders would have the opportunity to earn credits for open orders that do not execute on the day entered.

²⁴ This is also similar to the manner in which the NASDAQ Stock Market, LLC (“NASDAQ”) applies pricing for its “Retail Price Improvement Program.” See NASDAQ Rule 7018(g).

²⁵ See SR-NYSE-2011-55, supra note 23 at 40679-80 (citing the Concept Release).

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. In this regard, the Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would encourage competition and result in better prices for retail investors. The Exchange believes that the proposed change to footnote 10 in the Fee Schedule would not impose a burden on competition but rather will create an incentive to submit open orders to the Exchange, thereby promoting competition.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may

²⁶ 15 U.S.C. 78f(b)(8).

readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁷ of the Act and subparagraph (f)(2) of Rule 19b-4²⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(2).

²⁹ 15 U.S.C. 78s(b)(2)(B).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2014-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2014-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available

publicly. All submissions should refer to File Number SR-NYSEARCA-2014-22 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Kevin M. O'Neill,
Deputy Secretary.

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³⁰ 17 CFR 200.30-3(a)(12).